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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,732	08/05/2003	Nouri E. Hakim	4009.052.200	6654
28083	7590	08/02/2004	EXAMINER	
LAW OFFICE OF MORRIS E. COHEN 1122 CONEY ISLAND AVENUE SUITE 217 BROOKLYN, NY 11230			WEAVER, SUE A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/634,732

**Applicant(s)**HAKIM, NOURI E. *an***Examiner**

Sue A. Weaver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: The features describe with "8" and "494" do not appear to be to have been identified in the drawings. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

### **Annotated Drawing Sheets**

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A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

2. The abstract of the disclosure is objected to because it does not reflect the nipple or spout with applicant's valve construction. Correction is required. See MPEP § 608.01(b).

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities: It is noted that the brief description to the drawings does not appear to include Figures 1(A)-1(E.), 2(a)-2(d), 3(a)-3(e), 4(a)-4(f) or 5(a)-5(f). It is requested that applicant carefully review the description and drawings to be sure the reference numerals correspond with what is shown.

Appropriate correction is required.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It should be noted that the outset that applicant refers to "said baby bottle nipple" in each of independent claims 1, 14 and 27 implying that the drinking apparatus ins a nipple for a baby bottle. However there is no clear antecedent basis in the claims for a baby bottle nipple. If such a nipple is indeed intended to be claimed then a baby bottle nipple in each of claims 2, 3, 15, 16, 28 and 29 becomes a double inclusion of that in claims 1, 14 and 27. Furthermore it makes it unclear how the said baby bottle nipple is related to a spout as claimed in each of claims 4, 6, 7, 17, 19, 20, 30, 32 and 33.

Claims 1 and 27 also recite the limitation "said bottom surface" in line 17 and 10 respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "said bottom wall", said upper surface" and "said lower surface"" in line 16. There is insufficient antecedent basis for this limitation in the claim. It appears that part of the claim was left out

Since applicant already sets for a tip in claim 1, it appears that "a tip" in claims 9 and 10 is a double inclusion of that set forth in claim 1.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morifuji et al in view of Brown et al.

Morifuji et al teach applicants drinking apparatus of flexible material having an inner tube at 11a spaced from the interior surface of the outer wall and with a valve located at the bottom of the tube at 12. Furthermore the use of a membrane structure with a concave upper surface and a flat lower surface surrounded by a curved surface to provide a snap action valve is well-known in the art as taught by Brown et al. To have merely provided such a snap action valve in the apparatus of Morifuji to provide response to pressure would have been obvious in view of such teaching by Brown et al. Note the bottom valve taught by Morifuji et al at 19.

6. Claim 14-16, 18, 21, 22 and 24-26 insofar as they are complete, are rejected under 35 U.S.C. 103(a) as being unpatentable over Morifuji et al in view of White.

To have further provided an enlargement or protrusion on an outer surface of the side wall which contacts the inner surface of the outer wall so as to control fluid flow would have been obvious in view of such teaching by White.

7. Claims 27-29, 31, 34, 35 and 37-39 are, rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Bachman et al.

To have formed the corner of the bottom wall such that it defines a protrusion toward the interior surface of the outer wall would have been obvious in view of

Bachman et al in Figure 15. Contact would have been inherent in the structure of Morifuji et al.

8. Claims 4, 17, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 14 and 27 above, and further in view of Brown.

To the extent that the term "spout" is intend to define any particular construction which distinguish over a nipple, Brown teaches the inclusion of both constructions receivable by a cap on a nursing container. To have simply formed the structure in such an alternative spout structure to be used with a nursing container would have been obvious in view of the teaching by Brown.

9. Claims 6, 7, 19, 20, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 14 and 17 above, and further in view of Hung.

To have shaped the outer wall as a soft spout to be received and a cap would have been obvious in view of Hung teaching such construction of a drinking container.

10. Claims 10, 23 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 14 and 28 above, and further in view of Loughheed.

To have alternately positioned the valve in the enlarged portion of the nipple tip for compression would have been obvious in view of the teaching of Laughed at 19.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mines, Prentiss, Paczonay, Proshan, Coy, Yamauchi and Decker

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show valves in tips. Getzewich et al show a valve membrane with a flat center. Larson et al, Condon and Kaura show vents.

12. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Alexandria, VA 22313-1450

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(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

### **Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
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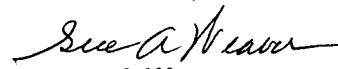
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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (703) 308-1186. The examiner can normally be reached on Tuesday-Friday.

— The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sue A. Weaver  
Primary Examiner

SW